

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STACY FOSTER, et al.,

Plaintiffs,

v.

COMMONWEALTH OF
MASSACHUSETTS, et al.,

Defendants.

C.A. No. 1:18-CV-10354

JOINT MOTION TO STAY PROCEEDINGS

Plaintiffs Stacy Foster, Jamie Kimball, Jonathan Riley and Nicole Westcott and the Defendants (“Commonwealth”) hereby submit this joint motion to stay these proceedings, including the deadline for Defendants’ response to the Amended Complaint, for 100 days until May 10, 2019. In support of this motion, the parties state the following:

1. This action seeks class-wide relief on behalf of approximately 28,500 individuals whose convictions were vacated and cases dismissed with prejudice by the Supreme Judicial Court of Massachusetts in 2017 and 2018, and others whose convictions were vacated and whose cases were dismissed after the misconduct in the Hinton and Amherst Drug Labs was revealed to the public, but before the Supreme Judicial Court took official action. Plaintiffs claim that under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), those individuals are entitled to the return of payments that were exacted from them, compensation for mandatory labor or community service they performed, and return of property seized from them, upon and as consequences of their now-vacated convictions.

2. Plaintiffs filed their Complaint on February 23, 2018. To facilitate ongoing discussions between counsel for Plaintiffs and the Commonwealth regarding the litigation, Plaintiffs requested and obtained extensions of the deadline by which to serve the Complaint on the Defendants. The Complaint was served on August 24, 2018, with a response deadline of September 14, 2018. No responsive pleading was filed in response to the Complaint.

3. On September 6, 2018, Plaintiffs filed an Amended Complaint. ECF No. 27.

4. On September 13, 2018, the parties filed a joint motion for a stay of proceedings for 120 days to allow the parties to continue their efforts to identify and discuss a potential global resolution of certain claims in the Amended Complaint. ECF No. 36. On September 17, 2019, the Court allowed the motion. ECF No. 37.

5. Defendants have not yet filed a response to the Amended Complaint, which is due January 31, 2019.

6. Since March 2018, counsel for Plaintiffs and the Commonwealth have continued to engage in regular discussions and joint efforts to negotiate a potential resolution of certain claims in the Amended Complaint, including the appropriate forum for such a resolution. These efforts involve addressing the complex issues that arise from, *inter alia*, the size of the proposed class, the length of time at issue, and the collection of information from multiple state government bodies.

7. A further stay of proceedings in this Court would facilitate the parties' efforts at negotiating a potential global resolution of certain claims, which have been productive. The parties have identified categories of fees and fines that would likely be covered by a potential global resolution, and for such categories of fees and fines, the parties anticipate making

substantial progress in the coming months in aggregating and analyzing a large amount of data regarding relevant payments made by putative class members.

8. Moreover, a further stay of proceedings would allow the parties to endeavor to address the need for global relief identified by the Supreme Judicial Court on October 30, 2018 in *Commonwealth v. Martinez*, 480 Mass. 777 (2018). In *Martinez*, the relief sought was on behalf of one criminal defendant whose conviction had been dismissed as a result of misconduct in the Hinton Drug Lab. The Supreme Judicial Court also addressed the need for a system-wide mechanism for returning fees to individuals whose convictions have been dismissed in connection with misconduct in the Hinton and Amherst Drug Labs. The Court has directed the Attorney General and the Committee for Public Counsel Service to report to the Court no later than April 30, 2019 (specifically, to the single justice responsible for the implementation of the dismissal protocols for Dookhan and Farak defendants) in writing regarding the status of this putative class action litigation. *Martinez*, 480 Mass. at 798.

9. With a deadline for responsive pleadings in this action for May 10, 2019, the week following the deadline for reporting to the Supreme Judicial Court, the parties can continue working towards addressing these complex issues and negotiating global relief that could reduce the need for adversarial litigation.

10. The parties believe that a 100-day stay is in the interests of justice and will conserve judicial resources.

Accordingly, the parties hereby move this Court to stay these proceedings, including Defendants' deadline for responding to the Amended Complaint, for 100 days, until May 10, 2019.

Respectfully submitted,

<p>Plaintiffs</p> <p>STACY FOSTER, JAMIE KIMBALL, JONATHAN RILEY, and NICOLE WESTCOTT,</p> <p>By their Attorneys</p> <p><u>/s/ William W. Fick</u> DANIEL N. MARX, BBO# 674523 WILLIAM W. FICK, BBO# 650562 24 Federal Street, 4th Fl. Boston, MA 02110 (857) 321-8360 dmarx@fickmarx.com wfick@fickmarx.com</p> <p>LUKE RYAN, BBO# 664999 Sasson, Turnbull, Ryan & Hoose 100 Main Street, Third Floor Northampton, MA 01060 (413) 586-4800 lryan@strhlaw.com</p> <p>Date: January 29, 2019</p>	<p>Defendants</p> <p>COMMONWEALTH OF MASSACHUSETTS; CHARLIE BAKER, Governor; DEBORAH B. GOLDBERG, Treasurer; JONATHAN S. WILLIAMS, Administrator of the Trial Court; EDWARD DOLAN, Commissioner of Probation; MAURA HEALEY, Attorney General; KERRY GILPIN, Massachusetts State Police Superintendent; DANIEL BENNETT, Secretary of the Executive Office of Public Safety and Security; JONATHAN BLODGETT, Essex County District Attorney; DAN CONLEY, Suffolk County District Attorney; TIMOTHY J. CRUZ, Plymouth County District Attorney; MICHAEL MORRISSEY, Norfolk County District Attorney; MICHAEL D. O'KEEFE, Cape and Islands District Attorney; THOMAS M. QUINN III, Bristol County District Attorney; MARIAN T. RYAN, Middlesex County District Attorney; PAUL J. CACCAVIELLO, Berkshire County District Attorney; ANTHONY GULLUNI, Hampden County District Attorney; DAVID E. SULLIVAN, Northwestern District Attorney; and JOSEPH D. EARLY, JR., Worcester County District Attorney,</p> <p>By their Attorneys</p> <p>MAURA HEALEY ATTORNEY GENERAL</p> <p><u>/s/ Anne Sterman</u> Anne Sterman, BBO# 650426 Katherine B. Dirks, BBO# 673674 Assistant Attorneys General Government Bureau/Trial Division One Ashburton Place, Room 1813 Boston, MA 02108 (617) 727-2200 anne.sterman@state.ma.us katherine.dirks@state.ma.us</p> <p>Date: January 29, 2019</p>
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CERTIFICATE OF SERVICE

I, Anne Sterman, Assistant Attorney General, hereby certify that I have this day, January 29, 2019, served the foregoing document upon all parties of record, by electronically filing to all ECF-registered parties and by sending a copy, first-class mail, postage prepaid to all unregistered parties.

/s/ Anne Sterman
Anne Sterman